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Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Card Services, WC Docket No. 03-133; Expedited Petition to Reduce or Adjust the Proposed Fourth Quarter USF Factor, CC Docket No. 96-45

Dear Ms. Dortch:

The universal service fund is under continuing pressure. Public reports are that the contribution factor is likely to increase in the first quarter of 2005, rising from the current rate of 8.9% to more than 12% in the coming months.¹ Given that pressure, the Commission cannot continue to allow some carriers to get a free ride and avoid any contribution on certain services. The Commission should act now to deny AT&T's petition regarding prepaid calling card services, and require AT&T and similarly situated providers to pay contributions improperly withheld from the universal service fund in time to affect the first quarter 2005 contribution factor.

Due to a recent determination that schools and libraries commitments from the Universal Service Administrative Company ("USAC") are subject to the Anti-Deficiency Act, the universal service fund is facing approximately \$550 million shortfall in the beginning of 2005.² On November 2, 2004, USAC released a report projecting that it will need to collect approximately

¹ See Anne Marie Squeo, *Rural-Phone Subsidy's Shortfall Could Be Costly for Consumers*, Wall Street Journal, Nov. 1, 2004, at A-2.

² See USAC, "Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2005," at 29-32 (Nov. 2, 2004), available at www.universalservice.org ("USAC First Quarter 2005 Report").

\$2.03 billion to fund first quarter 2005 universal service programs.³ Based on these estimates, it is likely that in the first quarter of 2005, the universal service factor will be significantly higher than it ever has been.

The Commission can reduce the contribution factor for the next quarter by denying AT&T's prepaid calling card petition. As Verizon and others have pointed out, the longer the Commission delays in ruling on AT&T's petition, the longer AT&T will continue to shirk its responsibilities to pay the appropriate level of access fees and universal service charges on its prepaid calling card services.⁴ Not only do AT&T's actions threaten the competitive marketplace, but they add unnecessary strain on the universal service fund, by requiring other carriers to make up the universal service shortfall caused by AT&T's underpayment to the fund.⁵ Moreover, emboldened by the pendency of AT&T's petition, it is likely that other carriers are playing the same regulatory games as AT&T, realizing millions of universal service "savings" through mischaracterizing the nature of their services as "enhanced"⁶ There is reason to believe that other providers of these services, following AT&T's lead, may be undertaking the same approach and withholding additional tens or hundreds of millions of dollars in universal service contributions.⁷

On September 22, 2004, WilTel Communications, LLC ("WilTel"), filed a petition asking the Commission to deny AT&T's petition and require it to pay amounts wrongly withheld from the universal service fund in time to affect the contribution factor for fourth quarter 2004.⁸ Although the fourth quarter 2004 factor has already gone into effect, the Commission should act in time to affect the first quarter 2005 contribution factor.

Using the most recent USAC projections of program need, and AT&T's public admission that it has saved more than \$160 million in the last several years from failing to contribute to

³ See USAC First Quarter 2005 Report at 12, 14, 19, & 32 (total of projected need of more than \$1 billion for high cost funding; approximately \$196 for low income programs; \$12 million for rural health care; and \$823 million for schools and libraries).

⁴ See, e.g., Letter from Richard Juhnke, Sprint, to Marlene H. Dortch, FCC, WC Docket No. 03-133 (filed Aug. 2, 2004); Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, FCC, WC Docket No. 03-133 (filed Aug. 9, 2004); Letter from Adam Kupetsky, WilTel, to Marlene H. Dortch, FCC, WC Docket No. 03-133 (filed Oct. 27, 2004).

⁵ See Letter from Ann Rakestraw, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 03-133, at 8 (filed July 15, 2004) ("July 15 letter")

⁶ See Letter from Clint Odom, Verizon, to Lisa Zaina, USAC, at 1-3 (Mar. 5, 2004) (setting forth evidence that many providers of prepaid calling card services may not be contributing the proper amounts to the universal service fund).

⁷ See *Id.*

⁸ See WilTel Expedited Petition for Declaratory Ruling Regarding Enhanced Prepaid Card Services, *Federal-State Joint Board on Universal Service Proposed Fourth Quarter 2004 Universal Service Contribution Factor; AT&T Petition for Declaratory Ruling Regarding Enhanced Prepaid Card Services*, CC Docket No. 96-45, WC Docket No. 03-133 (filed Sept. 22, 2004).

universal service on prepaid calling card revenues,⁹ denying AT&T's petition and requiring it to repay universal service fees in time to affect first quarter 2005 needs would reduce the contribution factor by at least a full percentage point, from approximately 12.8% to approximately 11.7%. The calculations showing this impact are reflected in the attachment to this letter.

Moreover, even that calculation is conservative, and does not include several factors that could result in an even greater reduction to the universal service funding requirements. For example, this analysis does not account for (1) the fact that AT&T would have to report prepaid calling card revenues in the assessable base, which would increase the pool of assessable revenues (and thus the denominator used to calculate the factor); (2) the likelihood that AT&T's contribution now would be greater than \$160 million, as that was the amount of universal service "savings" estimated by the company as of September 2004, and does not include additional amounts the company has subsequently withheld; and (3) additional contributions (and reported revenues) for other prepaid calling card providers that are engaging in the same practice as AT&T.

The Commission should deny AT&T's petition and demand payment of all monies owed to the universal service fund without further delay.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/Joseph Mulieri

cc: Christopher Libertelli
Scott Bergmann
Matthew Brill
Daniel Gonzalez
Jessica Rosenworcel
Jeffrey Carlisle
Lisa Gelb
Tamara Preiss
Narda Jones

Attachment

⁹ In May of this year, AT&T publicly admitted that it has withheld \$140 million in universal service contributions since 1999. July 15 letter, at 2. This month, AT&T updated that estimate to state that, by the end of September, 2004, it had realized \$160 million in universal service "savings" by failing to contribute to the universal service fund on prepaid calling card revenues. *See* AT&T Corp., Form 10-Q, Notes to Consolidated Financial Statements (Unaudited), Section 10 (filed Nov. 5, 2004).

ATTACHMENT A

As shown in the chart below, even just requiring AT&T to make a one-time payment to the universal service fund of the \$160 million “savings” it has publicly admitted were realized through September 2004, would significantly reduce the universal service program needs, and result in a one percentage point reduction in the expected contribution factor for first quarter 2005. The impact would be even greater if AT&T were required to pay more (based on the additional “savings” it has realized by failing to pay proper universal service charges since last publicly reported), and if other carriers were likewise required to pay into the fund wrongly withheld amounts, and to properly report revenues from prepaid calling card services.

	Recent USAC projections	AT&T True- Up Payment	Revised calculations reflecting AT&T payment
Industry Revenues¹	\$18.095414 billion		\$18.095414 billion
USF Program Fund Needs (projected fund requirements and impact if needs are reduced by AT&T payment)	\$2.032529 billion	\$160 million	\$1.872529 billion
Adjusted Contribution Base (industry revenues minus fund needs, less one percent)²	\$15.902256 billion		\$16.060656 billion
Unadjusted Contribution Factor (program fund needs divided by adjusted contribution base)	0.1278138		.116591
Final Contribution Factor (rounded to one decimal place)	12.8%		11.7%

¹ Because the revenue projections for the next quarter are not yet available, this is based on projections used to establish the fourth quarter 2004 contribution. See Public Notice, DA 04-2976, CC Docket No. 96-45, at 2 (Sept. 16, 2004) (“September 16 Public Notice”).

² In accordance with FCC practices, this is the estimate of projected collected interstate and international end-user telecommunications revenues minus the projected revenue requirement to account for circularity, and decreased by one percent to account for uncollectible contributions. See September 16 Public Notice, at 2-3.